LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 47

VIRGINIA LAMEER, APPELLANT,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Filed August 11, 1956.

Jurisdiction noted November 19, 1956.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 590

VIRGINIA LAMBERT, APPELLANT,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Filed August 11, 1956

Jurisdiction noted November 19, 1956.

INDEX

	Page
Record from Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California	
Docket entries	1
Second amended complaint and plea of not guilty	8
Defendant's requests for instructions (given as modified)	10
Plaintiff's proposed instructions (given as modified)	12
Defendant's requests for instructions (refused)	14
Engrossed statement on appeal	15
Judge's approval of statement on appeal	21
Notice of appeal	21
Proceedings in the Superior Court of the State of California, in and for the County of Los Angeles, Appellate Department	22
Application for shortening of time for notice of motion and order thereon	22
Motion for additions to record	23
Memorandum opinion	29
Judgment	31
Notice of appeal to the Supreme Court of the United States	31
Precipe for record (omitted in printing).	
Clerk's certificate (omitted in printing).	
Order granting motion for leave to proceed in forma pauperis	33
Order noting probable jurisdiction	33

1 MUNICIPAL COURT OF LOS ANGELES
JUDICIAL DISTRICT

County of Los Angeles, State of California

No. 33463

PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff*,

vs.

MISS VIRGINIA LAMBERT, *Defendant*.

Docket Entries

CR. A 3411

Feb. 2, 1955

$500.00 Surety Bond filed.

Feb. 3, 1955

Complaint filed sworn to by G. Kritzman charging the Defendant with having on Feb. 2, 1955 at Los Angeles City, in the County of Los Angeles, State of California, committed a misdemeanor, to-wit:

VIOLATION SUBDIVISION (A) SECTION 52.39 LAMC

Feb. 3, 1955

Cause called. Judge Lippold presiding. Both parties ready. People represented by J. C. Denny (D.C.A.). Defendant represented by S. McMorris. Defendant in court duly arraigned, informed of the charge against him and of his legal rights. Defendant gives true name as charged and asks time to plead.

Ordered to appear and plead 2-17-1955 at 9:30 a.m.

Defendant personally waives statutory time for plea.

Bail up to stand.

Feb. 17, 1955

Cause called. Judge Lippold presiding. Both parties ready. People represented by J. C. Denny (D.C.A.). Defendant in court and represented by Samuel C. McMorris.

Cause continued to 3-3-1955 at 1:30 p.m. for hearing on demurrer.

Bail up to stand.

Mar. 3, 1955

Cause called. Judge Lippold presiding. Both parties ready. People represented by Walter Foster (D.C.A.). Defendant represented by S. McMorris. Defendant in court, demurrer overruled, enters his plea of NOT GUILTY of the offense charged.

Defendant personally waives statutory time for trial.

Defendant with counsel in open court each personally demands jury trial.

Jury trial set for April 14, 1955 at 9 a.m. in Division 7.

Bail up to stand.

Apr. 14, 1955

In the following case Naomi Spector reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Parks Stillwell presiding. Both parties ready. People represented by Arthur A. McCardle (D.C.A.). Defendant in court and represented by S. McMorris.

Transferred to Division 18 for trial.

2 Apr. 14, 1955

In the following case Wm. A. Weigel reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Byron J. Walters presiding. Both parties ready. People represented by Wm. Doran (D.C.A.). Defendant in court and represented by S. McMorris.

On motion of the City Attorney, and leave of court first obtained, an amended complaint filed.

Defendant informed by Court of constitutional rights.

Pleads not guilty.

The following jurors were sworn, examined and accepted:

1. Louis Zinger
2. Wm. H. Nicholas
3. Arthur L. Hammerstrom
4. Delmar W. Barber
5. Wm. H. Tomlinson
6. Mrs. Patricia B. Hunton
7. Leroy H. Grace
8. Samuel Miller
9. Mrs. Florence C. Meginniss
10. Harry J. Beckman
11. Mrs. Edna Hemmingren
12. Mrs. Smilka Radjenovich

Jury sworn to try cause.

Defendant's objection to introduction of offered evidence and to introduction of any evidence, on the ground that the complaint does not state a public offense.

Defendant's objection argued outside of presence of jury.

At 12 noon cause continued to 2 p.m.

Jury admonished.

At 2 p.m. cause called. Stipulated that jury and all parties are present as before.

Defendant's objection argued outside presence of jury.

Objection sustained with the provision that people are granted to 10 a.m. 4-15-1955 to file a second amended complaint, if so advised.

At 4:15 p.m. cause continued to 4-15-1955 at 10 a.m.

Jury admonished.

Bail up to stand.

Apr. 15, 1955

In the following case Wm. A. Weigel reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Byron J. Walters presiding. Both parties ready. People represented by W. Doran (D.C.A.). Defendant represented by S. McMorris. Defendant in court, duly arraigned, informed of the charge against him and of his legal rights. Defendant gives true name as charged and enters his plea of not guilty of the offense charged.

Second amended complaint filed.

Defendant waives reading of complaint.

Bail to remain the same.

People's Exhibit's filed "1" judgment 142412
"2" " 142123
"3" " 142412

Witnesses sworn and examined for people:
Edmund Flaherty
Rosa Chavez
People's Exhibits filed "4" by reference file 142412
"5" " 142123

People rest.
Witness sworn and examined for defendant:
Virginia Lambert
Motion argued outside presence of jury.
Jury excused and admonished.
Cause continued to 2 p.m.
Cause called 2 p.m. outside presence of jury.
At 2:50 p.m. jury returned to court room and were excused to 4-18-1955 at 10 a.m.
Jury admonished.
At 3 p.m. cause continued to 4-18-1955 at 10 a.m.
Bail up to stand.

Apr. 18, 1955
In the following case W. Weigel reporter is ordered to take down proceedings as provided by law.
Cause called. Judge B. J. Walters presiding. Both parties ready. People represented by W. Doran. Defendant in court and represented by S. McMorris.
At 10 a.m. cause called.
4 Argument over objection, argued outside presence of jury.
At 12:15 p.m. cause continued to 2 p.m.
At 2 p.m. cause called. Stipulated that jury and all parties are present as before.
Miss Virginia Lambert resumes stand for defendant.
Defendant rests.
Cause argued, at 3:10 p.m. cause continued to 4-19-1955 at 10 a.m.
Jury admonished.
Bail up to stand.

Apr. 19, 1955
In the following case W. Weigel reporter is ordered to take down proceedings as provided by law.

Cause called. Judge B. J. Walters presiding. Both parties ready. People represented by W. Doran (D.C.A.). Defendant in court and represented by S. McMorris.

At 11:30 a.m. cause called. Stipulated that jury and all parties are present as before.

Jury instructed, reporter ordered to report instructions verbatim.

Jury retired this 4-19-1955 at 12:30 p.m. in charge of Art Wire.

Jury taken to lunch Harvey House 12:30 p.m. via Tanner.

Jury returned to deliberation room at 2:30 p.m.

At this 4 p.m. jury return into court with the following verdict:

"We, the jury in the above entitled cause, find the defendant GUILTY of the offense charged.

Henry J. Beckman Foreman".

Verdict filed.

Defendant's motion to dismiss under 1385 Penal Code.

Defendant's motion for new trial noted.

Cause continued to 4-25-1955 at 10 a.m. for hearing on new trial and sentence.

Bail up to stand.

Apr. 25, 1955

In the following case E. Rasmusson reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Byron J. Walters presiding. Both parties ready. People represented by W. Doran (D.C.A.). Defendant in court and represented by S. McMorris. Defendant in court for hearing on motion for new trial.

Motion denied.

Defendant in court for sentence.

Defendant given summary probation on courts own motion.

Proceedings suspended without imposition of sentence and defendant placed on summary probation for a period of 3 years subject to the following terms of probation:

That defendant violate no law regarding public morals, safety or health, especially relating to Section 52.39 MC.

Defendant to pay $250.00 to clerk of court,

Stay to 5-2-1955 on fine.

Bail up to stand.

Apr. 29, 1955
Notice of Appeal filed with receipt of City Attorney.

May 4, 1955
Bond on appeal fixed in the sum of $500.00.

May 4, 1955
Proposed Statement on appeal filed with receipt of City Attorney.

May 9, 1955
$500.00 Surety Bond on appeal filed.

May 9, 1955
In the following case J. A. Morris reporter is ordered to take down proceedings as provided by law.
Cause called. Judge B. J. Walters presiding. People represented by F. Rothman (D.C.A.). Defendant not in court and not represented.
Upon defendant filing appeal bail, present bail ordered exonerated.

May 23, 1955
Notice Re-Reporter's Transcript filed.

6 May 31, 1955
Hearing to settle statement on appeal set for June 8, 1955, in Division 18 at 10 a.m.
Notices mailed with affidavits of service by mail.

Jun. 8, 1955
In the following case M. J. Ammerman reporter is ordered to take down proceedings as provided by law.
Cause called. Judge Walters presiding. Both parties ready. People represented by W. Doran (D.C.A.). Defendant in court and represented by S. C. McMorris.
Defendant in court for settling the statement on appeal. People's motion for continuance to 6-13-55 10 a.m.
Granted.
Cause continued to 6-13-55 at 10 a.m.
Bail up to stand.

Jun. 13, 1955
Notice of Appeal filed with receipt of City Attorney.

Jun. 16, 1955
Respondent's proposed amendments to Appellant's Proposed Statement on Appeal filed.

Jun. 20, 1955

Files on Appeal transmitted to the Appellate Dept. of Superior Court.

Jul. 5, 1955

Copy of Petition for writ of Mandamus served upon F. Ray Bennett, acting presiding Judge and said copy forwarded to the County Counsel's Office.

Jul. 18, 1955

Order dismissing appeal of June 13, 1955 filed.

Oct. 14, 1955

In the following case R. G. Osiel reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Byron J. Walters presiding. People represented by W. Doran (D.C.A.). Defendant not in court and not present.

This matter having been held pending decision of Superior Court on writ of mandate directed to the power of this court to grant the people time to propose amendments to the statement on appeal and it appearing that such writ of mandate has recently been denied. It is therefore ordered that Respondents proposed amendments to the Appellants proposed Statement on appeal are and each of them is allowed.

Defendant's counsel is directed to re-engross defendant's statement on appeal on or before Oct. 21, 1955.

7 Oct. 20, 1955

In the following case R. G. Osiel reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Byron J. Walters presiding. Both parties ready. People represented by W. Doran (D.C.A.). Defendant in court and represented by S. McMorris.

Motion filed and affidavit filed. Motion denied.

Oct. 21, 1955

Engrossed statement on appeal filed with receipt of City Attorney.

Nov. 16, 1955

In the following case M. Teplitz reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Byron J. Walters presiding.

People represented by W. Doran (D.C.A.). Defendant no appearance.

Engrossed Statement on appeal certified and signed.

Clerk's Certificate to foregoing paper omitted in printing.

8 IN THE MUNICIPAL COURT OF LOS ANGELES

JUDICIAL DISTRICT

COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff*,

VS.

MISS VIRGINIA LAMBERT, *Defendant*.

Second Amended Complaint—Filed April 15, 1955

Personally appeared before me, the undersigned, who, first being duly sworn, complains and says: That on or about February 2, 1955, at and in Los Angeles City, in the County of Los Angeles, State of California, a misdemeanor, to-wit: Violation of Subd. (a) of Section 52.39 of the Los Angeles Municipal Code was committed by Miss Virginia Lambert (whose true name to affiant is unknown), who at the time and place last aforesaid, being a person who, subsequent to January 1, 1921, had been convicted of an offense punishable as a felony on two occasions in the State of California, to wit: Violation of Section 470 of the Penal Code of the State of California on or about May 29, 1951 and on or about June 18, 1951 both times in Department 42 of the Superior Court of the County of Los Angeles, and whose conviction and convictions therefor had not been set aside in a manner provided by law prior to February 2, 1955, did wilfully and unlawfully be and remain in the City of Los Angeles for a period of more than five days without registering with the Chief of Police during such five day period, in the following manner, to-wit: filing with the Chief of Police a statement in writing, signed by such person, upon a form prescribed and furnished by the Chief of Police, giving the following information: his true name and all aliases which he has used or under which he may

have been known; a full and complete description of his person; the kind, character and nature of each crime of which he had been convicted; the place where such crime or crimes were committed and the place of conviction of the same; the name under which he was convicted in each instance and the date thereof; the name, if any, and the location of each prison, reformatory, jail or other penal institution in which he had been confined or to which he had been sentenced; the location and address of his residence, stopping place, living quarters or place of abode in the City of Los Angeles, and each such residence, stopping place, living quarters or place of abode which had been occupied or used by him in said City, stating whether such place of abode in which he resides is a private residence, hotel, apartment house or other building or structure; the length of time has occupied each such place of residence, stopping place or place of abode, and the length of time he expects to remain in such City; and permit and allow the said Chief of Police to take his photograph and finger-prints. All of which is contrary to the law in such cases made and provided, and against the peace and dignity of the People of the State of California. Said Complainant therefore prays that a warrant may be issued for the arrest of said Defendant .....that.....he....may be dealt with according to law.

Subscribed and sworn to before me on April 15, 1955.

ROBERT B. CONRAD
URBAN F. EMME,
Clerk of the Municipal Court of Los Angeles Judicial District, in said County and State.

By L. W. FOREMAN
Deputy Clerk

GEORGE J. BARBOUR

Appeal 5-9-55 $500 .SB Filed
(1952 Form LAMC 52.39(a)

9 S. McMORRIS

Municipal Court Proceedings

Date ..... Defendant in Court duly arraigned, informed of the charge against him and of his legal rights. Defendant gives true name as charged ..... and enters his plea of not guilty of the offense charged. Denies—Admits—prior conviction.....charged. Bail fixed at $.....Dollars.

---

11 IN THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

~~(Title Omitted)~~

Defendant's Requests for Instructions (Given as Modified)

I

In order for the defendant to be found guilty of the offense alleged, it is necessary for the prosecution to prove, beyond the reasonable doubt of the jurors, all of the elements of the crime charged. In the present case, these elements include:

1. The defendant must be proven to have been or to have remained in the City of Los Angeles for a period of more than five days.

2. The defendant must have been previously convicted of an offense punishable as a felony in the State of California (or of certain other offenses not relevant here).

3. This conviction of a felony must not have been set aside in a manner provided by law.

If the prosecution fails to prove any one of the stated elements of this offense, the defendant must be found not guilty. Thus, even if it is proven that defendant has been convicted of a felony and that defendant has resided or remained in Los Angeles City for more than five days, she is nevertheless not guilty of this offense unless the prosecution proves beyond a reasonable doubt that this conviction has not been set aside.

There is no presumption that a conviction has not been set aside, nor is it necessary for the defendant to take the stand to prove that such conviction has been set aside.

12 Under Section 1203.4, Penal Code, every defendant who has fulfilled the conditions of his probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, shall at any time thereafter be permitted by the court to withdraw his plea of guilty and enter a plea of not guilty; and the court shall thereupon dismiss the accusations or information against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. When a conviction has been set aside in this manner, it is not necessary for such a defendant to register with the police department. Since a substantial number of convicted persons, especially first offenders, are placed upon probation and have their offenses subsequently dismissed under Sec. 1203.4, there is no presumption that a convicted person remains such; and the prosecution must prove that a conviction has not been set aside in this or any other manner provided by law.

This is not a situation when the burden of going forward shifts to the defendant, since the entire record is equally available to the prosecution and the facts thereof are not peculiarly the knowledge of the defendant. Cal. Jur. 2d, Sec. 108; Peo. v. Rodrigo, 69 C. 601; Peo. v. Yeager, 194 C. 452.

II

In order for the defendant to be found guilty of the offense charged herein, it is necessary for the prosecution to prove beyond a reasonable doubt that the defendant had guilty knowledge, intent, or what is known in the law as mens rea, a Latin phrase translated as criminal intent or guilty mind. In other words, the defendant must be found to have "knowingly" done wrong.

III

No person may be compelled, in any criminal case, to be a witness against himself. This means that a defendant may not be required to produce evidence to help convict himself. He may remain entirely mute throughout the course of the trial, and need not take the stand.

13 An accused has the right to stand mute, clothed in the presumption of innocence, until the prosecution

has made out a prima facie case against him, and until then it is reversible error to cross-examine him and comment on his failure to testify. (Peo. v. Talle (1952) 111 ACA 685.) In other words, the court and prosecutor may not make adverse comment regarding the accused's failure to take the stand in the absence of a prima facie showing of defendant's guilt. Peo. v. Zoffel, 35 CA 2d 215; Peo. v. Alkou, 97 CA 2d 797; Peo. v. Roberts, 122 C. 377; Peo. v. Streuler, 121 C. 431.

Jury instructed orally. See official reporter's record thereof ordered to be taken verbatim in shorthand.

---

14 **Plaintiff's Proposed Instruction No. ___**
(Given as Modified)

YOU ARE INSTRUCTED that the date of the offense need not be proved as alleged. Any date within the period of limitation is sufficient.

Peo. v. Amaral, CR A 1143
Peo. v. Gitliff, 88 Cal. App. 589

---

15 **Plaintiff's Proposed Instruction No. ___**
(Given as Modified)

YOU ARE INSTRUCTED THAT it shall be unlawful for any convicted person to be or remain in the City of Los Angeles for a period of more than five days, without, during such five-day period, registering with the Chief of Police in the manner hereinafter prescribed.

---

16 **Plaintiff's Proposed Instruction No. ___**
(Given as Modified)

YOU ARE INSTRUCTED that every person required by this section to register shall do so by filing with the Chief of Police of the City of Los Angeles a statement in writing, signed by such person, upon a form prescribed and furnished by the Chief of Police, giving the following information:

1. His true name and all aliases which he has used or under which he may have been known;

2. A full and complete description of his person;

3. The kind, character and nature of each crime of which he has been convicted;

4. The place where each of such crimes was committed and the place or places of conviction;

5. The name under which he was convicted in each instance and the date thereof;

6. The name, if any, and the location of each prison, reformatory, jail or other penal institution in which he was confined or to which he was sentenced;

7. The location and address of his residence, stopping place, living quarters or place of abode in the City; if more than one residence, stopping place, or place of abode, that fact must be stated and the location and address of each given;

8. A statement of the kind of residence, stopping place or place of abode in which he resides, whether the same is temporary or permanent, i.e., whether the same is a private residence, hotel, apartment house or other building or structure;

9. The length of time he has occupied each such place of residence, stopping place or place of abode, and the length of time he expects or intends to remain in the City;

10. Such other and further information as may be required by the Chief of Police for the purpose of aiding and assisting in carrying into effect the provisions and intent of Sections 52.38 to 52.43, inclusive.

18 IN THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

(Title Omitted)

Defendant's Requests for Instructions

(Refused)

IV. Intent, Wilfulness

In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence.[1] Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent, are not guilty of the crime alleged.[2] There can be no union of the act and intent necessary to constitute a crime unless the act be done "wilfully" or "knowingly."[3] An information which charges that a person "wilfully and unlawfully" performed an act is equivalent to alleging that he knowingly did so.[4] Wilfully imports a design to do the specific act.[5] To do a thing willfully is to do it by design, with set purpose. A purpose or willingness to commit an act renders it wilful.[6] An act is wilfully done when done with deliberation, and not through surprise or confusion, or a bona fide mistake.[7] The person doing an act wilfully is fully conscious of and knows what he is doing, and knows all the circumstances connected therewith which make the doing wilful.[8] Wilful acts and omissions are conscious acts and omissions; acts and omissions the possible consequences of which are considered and weighed and present in the mind.[9] An act is wilfully done when done designedly, intentionally, or perversely, and without reasonable excuse. "Knowledge"

1 Sec. 20, Penal Code.
2 Sec. 26, Penal Code.
3 Peo. v. Forbath, 5 CA 2d Supp. 767, 42 P. 2d 108.
4 Peo. v. Odom, 19 CA 2d 641, 66 P. 2d 206.
5 In re Ahart, 172 C. 762, 159 P. 160.
6 68 C. 434, 9 P. 457.
7 Peo. v. Sheldon, 68 C. 434, 9 P. 457.
8 Peo. v. Calvett, 93 C. 568.
9 Pupke v. Pupke, 79 P. 2d 290.

has been defined as actual information of fact. For an act to be done knowingly, it must be done with knowledge of actual facts, and must be done intentionally.[10]

Respectfully submitted,

SAMUEL C. MCMORRIS
Samuel C. McMorris
Attorney for Defendant

IN THE MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

(Title Omitted)

Engrossed Statement on Appeal

BE IT REMEMBERED that the above entitled cause came on regularly for trial in Division 18 of the above-entitled court, on the 21st day of April, 1955, before the Hon. Byron J. Walters, judge, presiding, the plaintiff being represented by W. Doran, Esq., Deputy City Attorney of the City of Los Angeles, and the defendant being represented by Samuel C. McMorris, Esq., her counsel.

The complaint against the defendant and appellant Virginia Lambert charged that on or about the 2d day of February, 1954, a misdemeanor, to wit: violation of Subd. (a) of Section 52.39 of the Los Angeles Municipal Code was committed by Miss Virginia Lambert, who at the time and place last aforesaid, being a person who, subsequent to January 1, 1921, had been convicted of an offense punishable as a felony on two occasions in the State of California, to wit: Violation of Section 470 of the Penal Code of the State of California on May 29, 1951 and June 18, 1951, both times in Department 42 of the Superior Court of the County of Los Angeles, did wilfully and unlawfully be and remain in the City of Los Angeles for a period of more than five days without registering with the

[10] Green v. Stewart, 106 Cal. App. 518; 289 P. 940, 944.

Chief of Police during such five day period, etc., as will more fully appear from the complaint on file herein.

A jury was duly impanelled.

The court discovered an error in the date of the alleged offense in that the year 1954 was designated, instead
21 of the year 1955, whereupon the Court called counsel to the bench and it was stipulated and agreed by counsel for the parties hereto that the complaint might be amended to designate the correct year. A recess was called for this purpose.

At the end of the recess, court was reconvened, the defendant was arraigned upon the First Amended Complaint, designating the date of the alleged offense as in 1955, and a plea of not guilty was entered thereto.

The People offered testimony and introduced evidence as follows:

Certified copies of the judgments in cases No. 142412 and 142123 in the Superior Court of the State of California, in and for the County of Los Angeles purporting to be judgments of conviction of the defendant in the cases specified in the complaint herein, and a certified copy of an order in the said case No. 142412, purporting to modify the probation of defendant, were offered as plaintiff's exhibits 1, 2, and 3, respectively, after being so marked for identification.

Defendant objected to the offer of this or any further evidence by plaintiff on the ground that the complaint failed to state a cause of action in that Sec. 52.39 of the Municipal Code is unconstitutional as regards both the State and Federal constitutions, for the following reasons: denial of equal protection; denial of due process; conflict with general law; self-incrimination; additional punishment; cruel and unusual punishment; police abuse of the ordinance in this case; unreasonable exercise of police power; unreasonable search and seizure.

After due argument, the Court denied the objection of defendant as to the claim of unconstitutionality. The Court held, however, that the complaint did not state a cause of action in that it failed to negative the exceptions specified in Subs. (f) of 52.39, to wit: that it did not appear from the complaint that the conviction of defendant of

the designated felonies had not been set aside in a manner provided by law.

The Court read into the record a memorandum opinion in case number 40099 in the Municipal Court of the Los Angeles Judicial District, in which the Court held, inter alia, that it was necessary to allege and prove that defendant had not had his record set aside in a manner provided by law. The court recessed until the next day to give the plaintiff a chance to amend the complaint in conformity thereto.

At the conclusion of the overnight recess, the Second Amended Complaint of plaintiff was introduced, and defendant pleaded not guilty thereto.

Plaintiff thereupon offered testimony and introduced evidence as follows:

Plaintiff's Exhibits 1, 2, and 3, as above specified, were introduced. Defendant objected on the same constitutional grounds as upon the previous offer of the said exhibits. Objection was overruled and the exhibits admitted.

Counsel for plaintiff and defendant then stipulated that defendant had resided in the City of Los Angeles, and had been and remained there, for the period specified by the ordinance and the complaint, and in fact for a seven-and-one-half year uninterrupted period.

Plaintiff then called Rosa Chavez as witness, whereupon defendant stipulated that her conviction had not been set aside in a manner provided by law at the time of her arrest.

Plaintiff called Edmund Flaherty as witness, whereupon defendant stipulated that she had not registered with the police department prior to her arrest.

Thereupon plaintiff rested its case.

Defendant took the stand and offered to prove that she did not know that she had a duty to register at or before the time of her arrest. Plaintiff objected to this testimony, and the court sustained this objection.

Defendant then offered to testify that she did not know that the crime of which she had been convicted was punishable as a felony. To this plaintiff objected. The Court overruled this objection. Defendant then testified as follows:

That she had no knowledge that the crime of which she

was convicted was punishable as a felony, that she fainted at the time of the pronouncement of her sentence, that she was throughout the proceedings which led to her conviction on two counts of forgery in a confused mental state and did not fully understand the nature of the proceedings, that she did not understand the difference between a crime punishable as a felony and other crimes, but that she
23 thought that, unless a person was confined in Tehachapi or Chino or San Quentin, that the crime involved was not punishable as a felony, whereas the only institution in which she had been confined was the County jail as a result of her conviction, and that she had not been informed by her former attorneys, by the probation officer, or any other officer that the crime she had been convicted of was punishable as a felony.

Defendant further testified on cross-examination that she heard the charges read on her arraignments in the Superior Court; that she had conversations with a Deputy Public Defender concerning the forgery charges, and that she entered pleas of guilty to the charges of forgery, and was present in court when the judgments were read.

Whereupon the defense rested.

The Court then charged the jury orally. The substance of the charges upon which this appeal is based in part is as follows, but notice is hereby given that, if required, the whole of the Court's instructions will be supplied by reporter's transcript:

The Court refused Defendant's Requested Instruction No. 4 re Intent, Wilfulness, which is filed as a part of the record herein. On the other hand, the Court, inter alia, quoted Secs. 7 (1) and 7 (5) of the Penal Code re intent. The Court further instructed the jury that defendant was guilty if she knew, at the time of her failure to register with the Chief of Police as charged, that she had been found "guilty of a crime punishable as a felony," that forgery is a crime punishable as a felony, and that ignorance of the law requiring Registration is no excuse. The court further instructed as to all other applicable law.

The jury retired and returned a verdict of "Guilty as charged."

Whereupon defendant moved the Court for a dismissal in the interest of justice on the grounds that (1) no evidence or insufficient evidence, at least, had been introduced

by the prosecution to sustain the charge in view of the circumstantial evidence rule that, where there are two possible reasonable theories, one pointing to guilt, the other to innocence, the defendant must be found guilty; (2) that the defendant is only very technically in violation of the ordinance involved in view of her right under Penal
24 Code 1203.4 to have her conviction set aside, which right she subsequently exercised so that she comes within the exception specified in Section 52.39 (f) of the Municipal Code; and (3) that in this case a conviction would not serve the purpose of vindicating the will of the State but would instead be a vindication of the will of two police officers who had made a false arrest and were using the ordinance in an effort to justify that arrest, as an afterthought.

The Court denied the said motion. The defendant indicated intention to move for a new trial. The date of hearing thereon was set for the 25th day of April, 1955, at 10:00 a. m.

At the time appointed for the hearing of the said motion, defendant moved for arrest of judgment on the ground that the ordinance alleged to be violated is contrary to the letter and spirit of the Federal and State Constitutions for the reasons hereinabove specified, and upon the further ground that, even if it should be conceded that the ordinance is valid on its face, that its misuse in a specific case or series of cases, including the one at bar, would render it unconstitutional in this specific instance. In support of this position, defendant offered to testify that on the date of her arrest on the alleged violation of 52.39 Municipal Code, she was accosted on the street corner by the two arresting officers, who, without informing her of the reason of their arrest or detention of her, began a search of defendant's person and effects, apparently for dope, by rolling up the sleeves of her coat and inspecting her veins and rummaging through her purse; that, when she protested this conduct, she was handcuffed and roughly shoved into the rear of the prowl car driven by the arresting officers; that at the time of her arrest, she was in the company of her employer and attorney, who attempted to discuss the matter with the arresting officers, who ignored him; that she was taken to Wilshire Station and there interrogated for two hours in an offensive and insulting manner, and disrobed and fur-

ther searched about her person, all without being told the reason for her arrest; that, while she was there detained, her attorney and employer requested prmission to talk to her, but that such permission was refused by the lieutenant in charge; that, after their investigation and interrogation failed to reveal that she was engaged in any present criminal conduct, that the lieutenant "decided" to book her on a charge of failure to register as an ex-convict; that that was the first time that she had been informed of any charge upon which she was being held; and that no effort was made to permit her to register in lieu of being further held by them and booked.

The Court denied this proffer of evidence by defendant, and denied defendant's motion to arrest judgment.

Defendant then moved for a new trial on the grounds that: (1) the verdict was contrary to law and evidence, and (2) the Court had misdirected the jury in matters of law and had erred in the decision of questions of law arising during the course of the trial.

Defendant's motion was denied. The Court suspended the imposition of sentence and placed defendant on three year's summary probation on condition that she violate no law dealing with public health, welfare, or morals, and in particular Section 52.39 of the Municipal Code and on the further condition that defendant pay forthwith to the Clerk of the Municipal Court the sum of $250.00.

Defendant will base her appeal upon all adverse rulings hereinabove specified, including, but not limited to:

(1) The admission of evidence herein in view of the unconstitutionality of the ordinance, as hereinabove specified.

(2) The Court's rejection of testimony as to defendant's ignorance of her duty to register.

(3) The Court's denial of defendant's motion for dismissal in the interest of justice.

(4) The Court's refusal of defendant's Request for Instructions No. 4.

(5) The Court's quoting of Sec. 7(5) of the Penal Code.

(6) The ambiguity in the Court's instruction regarding defendant's knowledge of the punishability of her prior crime.

(7) The Court's instruction, under the circumstances of this case, that ignorance of the law is no excuse.

(8) The Court's denial of defendant's motion to arrest judgment.

26 (9) The Court's denial of defendant's motion for a new trial.

(10) The Court's judgment.

Respectfully submitted,

SAMUEL C. McMORRIS
Samuel C. McMorris
Attorney for Defendant

---

27 IN THE MUNICIPAL COURT

Judge's Approval of Statement on Appeal—Filed Nov. 16, 1955

The Court does now settle and allow the foregoing Statement on Appeal and certifies that the same is a true and correct statement of the proceedings had in the above entitled action.

WALTERS
Judge of the Municipal Court

Dated: Nov. 16, 1955

---

28 IN THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

(Title Omitted)

Notice of Appeal

The defendant in the above entitled cause hereby appeals to the Appellate Department of the Superior Court of the State of California in and for the County of Los Angeles from the order of the above entitled court made and entered on the 25th day of April, 1955, denying defendant's motion for a new trial and from the final judg-

ment of conviction rendered and pronounced by the above entitled court on the 25th day of April, 1955.

Dated: April 25, 1955.

SAMUEL C. McMORRIS
Attorney for Defendant and appellant.

Nov. 4, 1955

Bond on appeal fixed in the sum of $500.00.

WALTERS,
Judge

---

29 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, APPELLATE DEPARTMENT

(Title Omitted)

Application for Shortening of Time for Notice of Motion and Order Thereon

Comes now Virginia Lambert, Defendant-Appellant, by Samuel C. McMorris, and applies to the Court for its order shortening the time for notice of motion for additions to record herein, and permitting the said motion to be heard on Thursday, the 5th day of January, 1956, at 9:30 A. M. in said court.

SAMUEL C. McMORRIS,
Samuel C. McMorris
Attorney for Defendant

ORDER

It is hereby ordered that Defendant's Motion for Additions to Record be heard in the above-entitled court on Thursday, the 5th day of January, 1956, at 9:30 A. M.

BISHOP
Presiding Judge

1/3/56

STIPULATION

It is hereby stipulated, by and between the attorneys for the parties hereto, the motion of defendant-appellant for

additions to record be heard in the above-entitled court on Thursday, the 5th day of January, 1956, at the hour of 9:30 o'clock a. m.

S. C. McMorris
Attorney for Defendant-Appellant

P. E. Grey
Deputy City Attorney

---

30 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, APPELLATE DEPARTMENT

(Title Omitted)

Motion for Additions to Record

Comes now Virginia Lambert, Defendant-Appellant, under Rule 9, Rules on Appeal from Municipal Courts and Inferior Courts in Criminal Cases, and moves the Court to authorize the trial judge to order a Reporter's Transcript of the testimony of Defendant and the oral instructions of the trial court, and to order that such Reporter's Transcript be furnished at the expense of Los Angeles County.

/s/ Samuel C. McMorris
Samuel C. McMorris
Attorney for Defendant-Appellant

Affidavit re Motion for Additions

County of Los Angeles } ss
State of California }

Samuel C. McMorris, being first duly sworn according to law, deposes and says:

I

That defendant, on or about the 19th day of April, 1955, was found guilty of the misdemeanor charged in Case No. 33463 in the Municipal Court of the Los Angeles Judicial District, to wit: failing to register as a convicted person.

II

That on the 25th day of April, the said Municipal Court, by and through the Honorable Byron J. Walters, judge, denied defendant's motion for a new trial and placed defendant on three years summary probation upon the condition, inter alia, that defendant pay forthwith the sum of $250.00 into the Court.

III

That within the time provided by the Rules of the Judicial Council relating to appeals from inferior courts to the Superior Court, defendant duly served her notice of appeal upon plaintiff.

IV

That affiant wished to submit a Reporter's Transcript of the trial, but was informed by the office of the Court Reporter that such transcript, in Municipal Court matters, would have to be furnished at the expense of defendant; that defendant was then and is now an indigent person and was then and is now unable to pay the expenses of such a transcript; that, because of defendant's indigence as aforesaid, affiant was compelled to proceed by way of Statement on Appeal; that affiant was then, and is now, donating his services to defendant because of her inability to pay counsel fees, and as a charity matter.

V

That on the 4th day of May, 1955, defendant filed her Proposed Statement on Appeal; that on the 1st day of May, 1955, the clerk of the said Municipal Court set June 8, 1955, as the date for settling the Statement on Appeal, and mailed notices to the People and to defendant; that defendant served a copy of the said Proposed Statement upon the People prior to the filing thereof; that at no time prior to the said date did the people prepare or serve or file any proposed amendments to petitioner's Proposed Statement on Appeal, nor did the People at any time prior to the time so set by the Court for settling the said Statement, move the Court for an extension of time in which

to file amendments to the said Proposed Statement, or submit an affidavit showing good cause therefor, as required by Rule 6, Rules on Appeal from Inferior
32 Courts; that on June 8, 1955, the said Municipal Court by and through the Honorable Byron J. Walters, Judge, arbitrarily granted the People an extension of fifteen days in which to file such amendments; that thereafter on the 16th day of June, 1955, the People filed its Proposed Amendments.

VI

That on the 5th day of July, 1955, defendant, in Case No. 646331 in the Superior Court, petitioned for a writ of mandate requiring the trial court to strike from the records and files of Case No. 33463 in the Municipal Court the proposed Amendments to Defendant's Proposed Statement of Appeal so filed contrary to the Rule of Court in such cases provided; that on or about the 14th day of October, 1955, the said Superior Court denied petitioner's petition aforesaid.

VII

That on the 14th day of October, 1955, the said Municipal Court, in the absence of affiant but in presence of People's Counsel, issued its order as follows: This matter having been held pending decision of the Superior Court on a writ of mandate directed to the power of this court to grant the people time to prepare amendments to the Statement of Appeal and it appearing that such writ of mandate has recently been denied, it is therefore ordered that Respondent's proposed Amendments to the appellant's proposed Statement on Appeal, are, and each of them is, allowed. Defendant's counsel is directed to re-engross defendant's Statement on Appeal on or before October 21, 1955.

VIII

That at no time did affiant receive written notice of the last-stated order of the court; that on the 19th day of October, 1955, and not prior thereto, affiant was informed by the clerk of the trial court, that the court had issued its order as aforesaid; that on the 20th day of October, 1955, affiant, in open court in the presence of People's

counsel, moved the court for an extension of time in which to engross the said statement and to object and be heard on people's amendments; that this motion of affiant was denied; that on the 21st day of October, 1955, the engrossed statement was submitted by affiant as ordered by the trial court; that on the 28th day of November,
33 1955, files on appeal were transmitted to the Appellate Department after certification and signing of said statement by the trial court.

IX

That in the opinion of affiant the said Engrossed Statement, so certified without notice of time of settlement and without opportunity for affiant to be heard on his objections to respondent's proposed Amendments, is in error in those instances in which People's amendments were substituted for appellant's Proposed Statement, and in the additions to the statement as proposed by respondent; that important parts of defendant's proffered but excluded testimony were omitted by inadvertence in appellant's Proposed Statement; that the Appellate Department may be precluded from inquiry into possible misdirection of the jury by the trial court in view of the fact that the instructions were oral and have not been furnished in their entirety because of defendant's indigence as aforesaid.

X

That affiant has recently become apprised of 1955 Amendments to the Government Code, not in force at the time defendant submitted her Proposed Statement, which make it possible for the County to furnish a Reporter's Transcript in misdemeanor as well as in felony cases; that in view of the aforesaid facts, justice and a full and fair hearing of the issues of law herein require a Reporter's Transcript; that it is highly important for the record to be complete at this time in view of the issues raised regarding violation of the Federal Constitution, the final hearing whereof may be had before the Supreme Court of the United States; and further affiant now says not.

SAMUEL C. MCMORRIS
Samuel C. McMorris

Subscribed and sworn to before me, a notary public of the County of Los Angeles, State of California, this 3rd day of Jan. 1956.

HARRY M. CURRY
Notary Public,
Los Angeles County, Calif.

34 **Points and Authorities in Support of Motion for Additions to Record**

I

RULES ON APPEAL FROM MUNICIPAL COURTS AND INFERIOR COURTS IN CRIMINAL CASES

Rule 9. On a sufficient showing by affidavit, or otherwise, that evidence was taken or proceedings were had in the trial court or that papers are there on file which are material to a disposition of the appeal and are not included in the record on appeal, and a showing of good cause why the same have not been included in said record, the Superior Court may authorize the trial judge to make a further certificate as to such evidence or other proceedings or papers, and direct the same, when so certified, to be added to the record.

Rule 7. Upon the filing of such proposed amendments or the expiration of the time therefor without the filing thereof, the trial judge *shall* forthwith *fix a time for settlement* of the statement or transcript, or both, which time shall be as early as the business of the court will permit, either in chambers or in open court, and cause *notice thereof to be mailed*, at least five days before the time fixed *to each party*, or if any party appears by attorney, then to his attorney . . . . The trial judge shall *at the time fixed*, . . . settle the statement or transcript, or both, and the amendments proposed thereto, if any. . . . (Italics furnished)

II

The procedural rules of the courts are a part of due process of law and must be observed in the interests of orderly functioning of the administration of justice. Peo. v. Gilbert, 25 C(2d) 422, 154 P 2d 657.

Where the court or an officer thereof has knowledge re-

quiring the exercise of a duty on behalf of the accused, failure to exercise such duty constitutes a denial of due process. Robinson v. Johnston (DC Cal.) 50 F Supp 744.

III

Government Code

Sec. 72195. Government Code Sections 69942 to 69953, inclusive, and Section 273 of the Code of Civil Procedure are hereby made applicable to the qualifications, duties, official oath, certification of transcripts and fees of official reporters of municipal courts, except that the fee for reporting testimony and proceedings in contested cases, except for official reporters of municipal courts where a statute provides otherwise, is twenty-five dollars ($25) a day.

Sec. 69952. Fees of Reporters: Criminal cases: County to pay. In criminal cases in which the court specifically so directs, the fee for reporting and for a transcript ordered by the court to be made shall be paid out of the county treasury on the order of the court, except that when a daily transcript is ordered pursuant to Code of Civil Procedure Section 269 such section shall apply. In any case, the court shall not order to be transcribed and paid for out of the county treasury any matter or material except that reported by the reporter pursuant to Code of Civil Procedure Section 269.

Sec. 72604. Official reporter: Fees for services in county having population of 2,000,000 inhabitants, or over (Los Angeles County) . . . All other fees of such reporters for transcriptions shall be as provided in Sections 69947 to 69953 of the Government Code.

IV

On appeal from a criminal judgment or from the order denying a new trial, the defendant is entitled, on timely application, to have the record on appeal furnished by the state. Paiva, in re (1948) 31 C 2d 503, 190 P 2d 604. (This case, and others to follow, is included in Government Code annotations to Sec. 69952, formerly applicable to Superior Courts only, now by reference made applicable to Municipal Courts).

Enactment of Penal Code Sec. 1247 clarified the legislative intention as expressed in this statute to the effect that the defendants in criminal cases were not to bear the cost of the reporter's transcript and were entitled to it *as a matter of right* subject only to the discretion of the court in designating the portions deemed necessary to make a fair record upon appeal. Peo. v. Smith
36 (1949) 34 C 2d 449, 211 P 2d 561.

Under Rules on Appeal, rules 33(a), 35(b), defendant appealing from a judgment of conviction is entitled to the normal reporter's transcript at the expense of the state as a matter of right without any application to or order of the trial court, and cannot be required to take the pauper's oath in order to obtain it. The pre-existing requirement as to an order of court, allowing the court to limit the transcript to what it deems relevant and necessary, is continued only as to the additional transcript provided for by rule 33(b). Peo. v. Smith, 34 C 2d 449; 4 Cal. Jur. 2d, Appeal and Error 438, p. 262.

Respectfully submitted,

SAMUEL C. McMORRIS
Samuel C. McMorris
Attorney for Defendant-Appellant

---

38 IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Superior Court No. CR A 3411
Trial Court No. 33,463

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

vs.

MISS VIRGINIA LAMBERT, *Defendant and Appellant.*

Memorandum Opinion—Filed March 2, 1956

Appeal by defendant from an order and a judgment of the Municipal Court of the Los Angeles Judicial District, Byron J. Walters, Judge. Affirmed. Motion denied.

For Appellant—Samuel C. McMorris, Esq.

For Respondent—Roger Arnebergh, City Attorney; Donald M. Redwine, Assistant City Attorney; Philip E. Grey, Deputy City Attorney.

The defendant was convicted of violating subdivision (a) of section 52.39 of the Municipal Code of the City of Los Angeles, failing to register with the police after being convicted of a felony. She appeals from the order denying a new trial and attempts to appeal from the judgment although there is no judgment. However, she could have appealed from the order granting probation, and we shall consider this as such an appeal.

It is undisputed (1) that defendant, on May 29, 1951
and on June 18, 1951, was convicted of two felonies,
39 each a violation of Penal Code 470; that she was
sentenced to prison on each charge; that execution of the sentence was suspended; and that she was granted probation on condition that she serve time in the county jail; (2) that prior to February 2, 1955 (the date charged in the complaint) neither of said convictions had been set aside; (3) that on February 2, 1955 she resided in Los Angeles and had resided there "for a seven and one half year uninterrupted period," and (4) that she had not registered with the police prior to her arrest. In other words, every element of the crime charged was proved without dispute. There is no merit to the defense that she did not know she had been convicted of felonies and that she did not know she had to register with the police of the City of Los Angeles as a convicted felon. There is no merit to the claim that the ordinance is unconstitutional. Nothing has been suggested to show how anything in a reporter's transcript could result in a reversal.

The order denying a new trial and the order granting probation are affirmed. Appellant's motion for additions to the record is denied.

Judge

Dated March 2, 1956.

We concur:

BISHOP
Presiding Judge

PATERSON
Judge

40 IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent

vs.

MISS VIRGINIA LAMBERT, *Defendant and Appellant.*

Judgment—March 2, 1956

This cause having been argued and submitted and fully considered, judgment is ordered as follows:

It is ORDERED and ADJUDGED that the order denying a new trial and the order granting probation made and entered in the Municipal Court of the Los Angeles Judicial District, County of Los Angeles, State of California, in the above entitled cause be and the same are hereby affirmed. Appellant's motion for additions to the record is denied.

---

41 IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

(Title Omitted)

Notice of Appeal to the Supreme Court of the United States Filed April 13, 1956

I

Notice is hereby given that Miss Virginia Lambert, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the above-entitled court affirming the judgment of conviction herein and entered on the 2d day of March, 1956.

This appeal is taken pursuant to 28 U. S. C. Sec. 1257(2).

Appellant was convicted of the crime of failing to register with the police after being convicted of a felony, in violation of Section 52.39 of the Municipal Code of the City of Los Angeles; was placed on three-years summary probation on condition that she pay a fine of $250.00; and is presently enlarged on bail in the sum of $500.00.

II

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) The judgment roll;

(b) A reporter's transcript of the testimony on the trial herein.

III

The following questions are presented by this appeal:

42 (1) Whether the ordinance herein involved is in violation of the Constitution of the United States;
(2) Whether due process or equal protection was denied appellant upon her arrest and trial;
(3) Whether the conviction herein was obtained as the result of an unreasonable search and seizure and arrest, in violation of the Federal Constitution.

SAMUEL MCMORRIS
Samuel McMorris
Attorney for Appellant

Service of Notice of Appeal (omitted in printing).

---

44 **Precipe for Record**

(omitted in Printing)

---

46 Clerk's Certificate to foregoing transcript omitted in printing.

47 SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 213 Misc.

(Title Omitted)

Order Granting Motion for Leave to Proceed in Former Pauperis—Filed November 19, 1956

ON CONSIDERATION of the motion for leave to proceed *in forma pauperis* in this case,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

---

48 SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 213 Misc.

(Title Omitted)

Order Noting Probable Jurisdiction—Filed November 19, 1956

APPEAL from the Appellate Department of the Superior Court of the State of California, Los Angeles County.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the appellate docket as No. 590.